

# **EXHIBIT D**



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Advogados

August 20, 2020

R. David Donoghue  
Holland & Knight LLP  
150 North Riverside Plaza, Suite 2700  
Chicago, IL 60606

**Via Email**  
david.donoghue@hklaw.com

**RE: Ryanair DAC / Booking Holdings Inc.**

Mr. Donoghue:

This responds to your letter dated July 30, 2020 to Booking Holdings, Inc. ("BHI"). As an initial matter, and a courtesy, we have provided a copy of your letter to Booking.com B.V., the entity for which we believe you intended this letter.

BHI adamantly disputes the accusations in your letter, all of which are inaccurate. BHI is a holding company that does not operate a consumer-facing travel website and does not scrape the websites of other companies for data, either directly or indirectly. As evidenced by public filings and other information available to you through your client's ongoing litigation with Booking.com B.V., you should already know BHI is a non-operating holding company that exists for the sole purpose of holding assets in its wholly-owned subsidiaries. Each of the subsidiaries assumes control over its own respective brands, including all day-to-day operations. The subsidiaries' respective websites and mobile apps are each also owned and controlled entirely by the relevant subsidiary or one of BHI's other subsidiaries. BHI is a distinct corporate entity from all of its subsidiaries and maintains an entirely separate corporate existence. Thus, your attempt to conflate BHI with its subsidiaries and your suggestion that BHI can be held liable for any conduct that its subsidiaries allegedly took is misguided.

For the avoidance of doubt, BHI does not conduct business directly with consumers and does not operate or control a consumer-facing travel website or app, including any websites or mobile apps under its subsidiaries' brands. Thus, BHI would have no reason to scrape Ryanair's -- or any other company's -- website as you have alleged. BHI would never have agreed to Ryanair's terms and conditions since it does not operate any website nor use Ryanair's website. For the same reasons, BHI has never engaged in the conduct alleged in your letter, so no unauthorized access has occurred or is occurring for it to cease.

In any case, your argument that the Computer Fraud and Abuse Act ("CFAA") could apply in this instance is unconvincing. First and foremost, your dispute is with Booking.com B.V. such that your letter is a blatant attempt to get two "bites at the apple" for claims that are



already pending in Ireland. Thus, your threatened lawsuit to bring foreign issues into the U.S. will not survive Rule 11 and Rule 12 scrutiny and would constitute frivolous duplication and undisguised gamesmanship.

In fact, even if you had legitimate complaints about a U.S. party, nothing in the CFAA provides that it was intended to apply extraterritorially to alleged injuries such as those of your client. The CFAA does not permit civil suits based on foreign injuries unless the presumption against extraterritoriality is rebutted as to the private right of action. And, even if the CFAA could apply, which it cannot, it does not prohibit the scraping of publicly accessible data from websites. Your reliance on *Facebook, Inc. v. PowerVentures, Inc.*, 844 F.3d 1058, 1067-68 (9th Cir. 2016) is inapposite where that case addressed information protected behind users' login information, and in any event noted that the alleged "[v]iolation of the terms of use of a website—without more—cannot establish liability under the CFAA." *Id.* at 1067.

It is apparent from your letter that your client has no facts or legal authority to support any lawsuit against BHI.

BHI trusts this response will bring this matter to a close. Please contact me if you wish to discuss it any further.

Sincerely,

A handwritten signature in blue ink, appearing to read "T. Michaud".

Teresa H. Michaud  
Partner

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Cc: Anne Assayag, *of the firm*